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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. [redacted] 189

CHARLES I. LICHTENSTEIN, a/k/a CHARLES WELLS,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR REHEARING OF ORDER DENYING A WRIT OF CERTIORARI ENTERED OCTOBER 10TH, 1965

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 1216

CHARLES I. LICHTENSTEIN, a/k/a CHARLES WELLS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR REHEARING OF ORDER DENYING A WRIT OF CERTIORARI ENTERED OCTOBER 10TH, 1965

TO THE HONORABLE, THE CHIEF JUSTICE, AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petition of the above named petitioner for a rehearing of the Order, entered October 10, 1965, denying the issuance of a writ of certiorari to review the Judgment of the Court of Appeals for the Fifth Circuit entered February 23, 1965, affirming the Judgment of Conviction for violation of Section 371, Title 18, United States Code entered in the United States District Court, for the Southern District of Florida, June 27, 1963, after a trial before Judge Bryan Simpson, without a jury, and from the Order of the Court of Appeals of the United States for the Fifth Circuit, denying the Petition for a Rehearing entered April 9, 1965, respectfully shows to this Honorable Court:

Question Presented for Review

1. Whether the petitioner was represented by counsel who was competent to conduct a criminal trial.

Constitutional Provisions Which the Case Involves

The Sixth Amendment of the Constitution of the United States provides (pertinent part):

> "In all criminal prosecutions the accused shall enjoy the right * * * to have the Assistance of Counsel for his defense."

Statement of Case

Petitioner was tried in the District Court of the United States, Southern District of Florida, without a jury, before Judge Bryan Simpson, upon an indictment, charging Conspiracy (Count 1) and the substantive crime of Engaging in the Business of betting and wagering, and did knowingly use and cause to be used a wire communication facility of the Western Union Telegraph Company for the transmission in interstate commerce from Tampa, Florida, to New York, New York, of a wire communication which entitled the recipient to receive money as a result of bets and wagers on horse races, in violation of Title 18, United States Code, Sections 1084 and 2 (Count 7 of the Indictment).

Upon the Conspiracy Count (Count 1) petitioner was tried together with Isaac B. Penso and Harry Kaflin. Upon the substantive count (Count 7) petitioner was tried alone, although the indictment charges that a defendant named Ed Reid, also known as Red Reid committed the crime alleged in the seventh count, together with petitioner.

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* T. of R. refers to transcript of record.

Petitioner was acquitted of the crime alleged in Count Seven of the Indictment (T. of R., pp. 419, 420).*

Petitioner was found guilty of the crime of Conspiracy (Count 1) together with a co-defendant, Isaac B. Penso.

Petitioner was sentenced to two years imprisonment.

Upon the trial had in the District Court petitioner was represented by Joseph A. Varon of Hollywood, Florida and William C. Pierce of Tampa, Florida.

Argument Relied Upon for a Rehearing

The petitioner's rights were violated under the Sixth Amendment of the Constitution of the United States, in that he was denied the assistance of counsel by reason of the ignorance of counsel.

POINT I

Upon the trial of petitioner in the District Court the Government called John W. Henagan as a witness.

Henagan was permitted to testify, without objection by petitioner's counsel to a conversation had with a man who told the witness Henagan his name was Reid (T. of R., pp. 50; 58; 60; 62; 63).

Henagan was permitted to testify concerning a memorandum he had made of bets to keep a record of it (T. of R., pp. 64-69) and the Government offered this memorandum in evidence and it was received and marked Government's Exhibit No. 2 without any objection on the part of counsel for petitioner (T. of R., pp. 69-71).

Henagan was permitted to testify that he had made bets with "Al Bike" in Boston, without any objection to such

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* T. of R. refers to transcript of record.

testimony which is wholly unconnected with the indictment upon which petitioner was tried (T. of R., pp. 72-73). Henagan was also permitted to testify that he made bets with the man named Reid (T. of R., pp. 72-73).

Henagan was permitted to testify that the person named Reid told him to wire the money that he owed on the bets (T. of R., p. 77).

Henagan was permitted to testify that he received a telephone call from Reid (T. of R., pp. 81, 83).

The United States Attorney asked the witness Henagan the following question (T. of R., p. 88):

> "Q. Now, in your conversation with 17, did whoever purported to be 17 make any threats to you? A. Yes."

Mr. St. Jean, counsel for the defendants Penso and Kaflin, made an objection to the question solely on the ground that it was leading and suggestive. Counsel for petitioner made no objection in his behalf.

On cross-examination of the witness Henagan by Attorney St. Jean Henagan was permitted to testify, without objection by counsel for petitioner, with respect to conversations he had with Reid (T. of R., p. 97).

Henagan was permitted, without objection by counsel for petitioner, to testify about conversations had with Reid (T. of R., p. 102).

On further cross-examination by Attorney St. Jean the witness Henagan was again permitted to testify to conversations had with the person alleged to be Reid, without any objection by counsel for petitioner (T. of R., pp. 103-105).

On cross-examination of the witness Henagan by Mr. Pierce, one of petitioner's counsel, the following questions

were asked of the witness Henagan and the following answers were made (T. of R., pp. —):

"Q. Now, didn't—First, I'll ask you: Do you know who Mr. Reid was? A. No, except that—

Q. Or at this time, do you know who he is? A. No, I don't know. I wouldn't know, if I saw him, no.

Q. Have you ever seen Mr. Reid? A. No."

Petitioner urges upon the Court that the foregoing clearly demonstrates that his counsel were ignorant of the law, inexperienced and inept, and by their failure to properly protect the rights of petitioner and make any objection to all of this testimony of the witness Henagan on the ground that there was no proper foundation laid for the introduction of this testimony of the witness Henagan relating to conversations had with the person named Reid, that these inexperienced and ignorant attorneys deprived the petitioner of the fair and impartial trial that is guaranteed to every defendant in a criminal trial.

Henagan testified that he does not know Reid; that he does not know who Reid is; that he would not know him if he saw him; that he had never seen Reid.

It is academic and requires no argument that all of the testimony given by the witness Henagan is clearly incompetent and inadmissible unless the Government had first established a foundation for the introduction of the testimony with respect to the conversations had between the witness Henagan and the person alleged to be Reid, by showing that the witness Henagan knew Reid; that he had spoken to him before, or, that he had spoken to him after, and that he recognized the voice that he heard over the telephone and that the voice was that of the person named Reid.

The testimony given by the witness Henagan with respect to conversation had with the person alleged to be Reid is the crux of the entire case.

If proper objections had been made by counsel for petitioner to all of this testimony, the Trial Court would have to sustain these objections unless the Government first laid a foundation for the introduction of such testimony.

The petitioner was in fact, not represented by counsel. Such representation is in fact no representation at all.

Certainly this Court must recognize that the words of the Sixth Amendment of the Constitution:

> "* * * to have the assistance of counsel for his defense"

to give these words any meaning, must imply that when a lawyer undertakes the defense of a defendant in a criminal trial he must be possessed of some knowledge of the law with respect to the rules of evidence.

Petitioner's attorneys had no knowledge of the law with respect to the rules concerning the admissibility of evidence. If they did have they would have objected to all of the testimony of the witness Henagan and moved to strike out all of this evidence, or, in the alternative, move that the Government be compelled to lay the proper foundation for the introduction of the testimony of the witness Henagan.

The failure of the attorneys for the petitioner to make the proper objections and the proper motions is inexcusable. Their failure to properly protect the rights of the petitioner denied him a fair trial.

The petitioner was on trial without counsel to help him in his defense.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the petition for a rehearing of the Order denying the petition for a writ of certiorari should be granted, and that upon such rehearing, the petition for a writ of certiorari should be granted.

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Certificate

I hereby certify that the within petition for rehearing is filed in good faith and not for the purpose of delay.

JOSEPH ARONSTEIN.